

IN THE JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY
COURT NO. 17

COURT ADDRESS:
23730 SHORTLY ROAD
GEORGETOWN DE 19947

CIVIL ACTION NO: JP17-13-002381

JAMES A LOFLAND VS RODNICA CANNON ET AL

SYSTEM ID: @2369205
JAMES A LOFLAND
402 YORKNOLLS DRIVE
CAPITOL HEIGHTS MD 20743

Appearances: All parties appeared *pro se*.

Before: Richard D. Comly, John C. Martin and Larry Sipple,
Justices of the Peace

Martin for the Court

NOTICE OF JUDGMENT/ORDER

The Court has entered a judgment or order in the following form:

On May 17, 2013 the plaintiff filed this action seeking to recover unpaid rent, utility charges, damages and possession of the rental property located at 3 Oak Street, Bridgeville, Delaware. On May 31, 2013 the defendants filed a counterclaim seeking \$6,500.00 in damages. A trial was held and on June 7, 2013 judgment was entered on behalf of the defendants. On June 11, 2013 the plaintiff filed a timely appeal of this judgment. This is the decision of the three-Judge Panel hearing the appeal as a trial *de novo* pursuant to 25 *Del.C.* §5717.

HISTORY

On March 5, 2013 the parties entered into a written lease for the subject property. The monthly rent was \$1,050.00. The defendants paid their first month's rent and a security deposit of the same amount. They have since paid rent for one additional month. The plaintiff introduced into evidence a letter dated May 6, 2013 sent to the defendants in which he detailed his claim for unpaid rent and utility charges owed to him and the reasons why he was pursuing possession of the property. The utility charges included water of \$247.02, oil of \$661.00 and propane of \$82.23. Also mentioned were unspecified damages to a gazebo in the defendants' rear yard.

Three witnesses for the plaintiff also testified. An employee of an oil supply company said that he checked the heating system in the tenement at about the time the defendants arrived there and found it working properly. A neighbor of the defendants testified that she saw the defendants' children playing in the gazebo but she never saw who damaged it. The Code Enforcement Officer for the Town of Bridgeville said that he inspected the rental property on April 19, 2013 after a complaint by the defendants and found problems that he documented in a written report. He said that when he re-inspected the property at the end of May, all the important items had been repaired.

Ms. Cannon testified that shortly after moving into this property, the defendants found that water was dripping through a part of the ceiling from a leaky roof. She notified the plaintiff of this but no repairs were made. So, she contacted the Town's Code Enforcement Officer and he came to the home to inspect it. He found several problems and issued a violation report to the plaintiff. She was concerned about the mold that had developed in the area of the leak and is still concerned that the mold might re-develop, even though the plaintiff has had the leak area repaired. She asked that she and Ms. Miles be relieved of all rent payments for this home because of the problems that were identified during their tenancy.

DISCUSSION

The first part of the plaintiff's claim was for unpaid rent. It was uncontested that the defendants only made two rent payments since they began occupancy in March. Therefore, the defendants owe rent and late fees of \$52.50 per month for May, June and July to the date of trial, minus a \$140.00 credit for the first month of occupancy, which was after the first of the month. Therefore, the defendants owe rent to the day of trial totaling \$2,380.00 and late fees totaling \$157.50. The defendants also owe \$247.02 for a water bill, which was uncontested.

However, the Court finds that the plaintiff's claim for oil and propane is premature because the proper calculation of these debts is not the cost of the total amount of these fuels at the time of their delivery but rather the cost of these fuels actually used by the defendants to the date of trial or their departure and proof of this was lacking. This claim can be re-filed by the plaintiff at an appropriate time.

The plaintiff's claim for damages to the gazebo is DENIED because there was no proof that the defendants or their children caused damage to the structure. Ms. Cannon did admit striking the gazebo with a stick but there was no evidence that this action caused damage. Therefore, the total owed by the defendants to the plaintiff is \$2,784.52.

Finally, the plaintiff's claim for possession of the rental property is DENIED because the only evidence relied on by the plaintiff at trial to establish lawful notice of rent due was a letter dated May 6, 2013. This letter did not comply with the requirements of 25 *Del.C.* §5502 to give the defendants five days to pay the amount due. Therefore, the notice was invalid. While the plaintiff made a passing reference to an earlier letter dated May 1, that letter was never introduced into evidence.

As to the defendants' counterclaim, the Court finds that there was no proof of actual damages to them by the plaintiff. The plaintiff had a duty to make necessary repairs to the rental property within a reasonable time and the Court finds that this was done. So, the defendant's counterclaim is DENIED.

ORDER

Therefore, after considering all the evidence presented, the Court enters judgment on behalf of the plaintiff and against the defendants in the amount of \$2,784.52 plus court costs of \$95.00 and post judgment interest at the legal rate of 5.75% per annum. Possession will remain with the defendants.

IT IS SO ORDERED this 24th day of July, 2013


Justice of the Peace/Court Official (SEAL)

